

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 08-97
Table of Allotments,)	RM-11428
FM Broadcast Stations.)	
(Crowell, Knox City, Rule, and Quanah, Texas))	

NOTICE OF PROPOSED RULE MAKING

Adopted: October 8, 2008**Released: October 10, 2008****Comment Date: December 1, 2008****Reply Date: December 16, 2008**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Rule Making filed by LKCM Radio Licenses, L.P. ("petitioner"), licensee of Stations KFWR(FM), Mineral Wells, Texas, KKAJ-FM, Ardmore, Oklahoma, KYBE(FM), Frederick, Oklahoma, and KJKB(FM), Jacksboro, Texas. The petition is part of a hybrid with four contingent applications. Petitioner has submitted filing fees for the applications pursuant to *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*.¹

2. Petitioner filed an application to change the channel class and community of license of FM Station KJKB from Channel 238A at Jacksboro, Texas, to Channel 238C3 at Scotland, Texas, as that community's first local service.² Petitioner also filed an application to change the channel class and community of license for FM Station KFWR from Channel 240C1 at Mineral Wells, Texas, to Channel 240C0 at Jacksboro, Texas.³ Petitioner further filed an application to change the channel class and community of license of Station KKAJ-FM from Channel 239C1 at Ardmore, Oklahoma, to Channel 239C2 at Davis, Oklahoma, as that community's first local service.⁴ Finally, petitioner filed an application to change the channel and channel class of FM Station KYBE from Channel 240A to Channel 239C3 at Frederick, Oklahoma. In order to accomplish these changes, petitioner has proposed changes to the FM Table of Allotments with respect to four vacant FM channels, as set forth below.⁵

¹ Report and Order, 21 FCC Rcd 14212 (2006) ("*Revised Allotment Procedures R&O*").

² See BPH-20080402ACC.

³ See BPH-20080402ABZ.

⁴ See BPH-20080402ABY.

⁵ See BPH-20080402ABJ.

3. In order to allot Channel 240C0 to Jacksboro and Channel 239C3 to Frederick, petitioner requests that the Commission change the channel of the vacant allotment at Rule, Texas, from Channel 239C2 to Channel 288C2. Channel 288C2 can be allotted at Rule, consistent with Section 73.207 of the Commission's rules, provided that the vacant allotment at Knox City, Texas, is changed from Channel 291A to Channel 293A, as further proposed by petitioner. To accommodate the allotment of Channel 293A at Knox City, petitioner proposes that the Commission change the channel of the vacant allotment at Crowell, Texas, from Channel 293C3 to Channel 255C3. Finally, in order to allot Channel 255C3 at Crowell, Texas, petitioner requests that the Commission change the channel of the vacant allotment at Quanah, Texas, from Channel 255C3 to Channel 251C3.⁶

4. The changes proposed by petitioner will result in the provision of first local services to the communities of Scotland, Texas, and Davis, Oklahoma. In addition, the channel changes for the four vacant allotments would move three of the four channels closer to the respective communities and would result in net gains in service.⁷ This proposal warrants consideration because it complies with our technical requirements and could serve the public interest.

5. The proposed channel substitutions at Crowell, Knox City, Quanah, and Rule, Texas, can be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b) as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Crowell, Texas	293C3	255C3
Knox City, Texas	291A	293A
Quanah, Texas	255C3	251C3
Rule, Texas	239C2	288C2

Proposed Coordinates for Channel 255C3 at Crowell, Texas: 34-03-58 NL and 99-43-52 WL, at a site 9.2 km (5.7 miles) north of Crowell.

Proposed Coordinates for Channel 293A at Knox City, Texas: 33-25-55 NL and 99-47-43 WL, at a site 2.7 km (1.6 miles) northeast of Knox City (no site change).

Proposed Coordinates for Channel 251C3 at Quanah, Texas: 34-24-09 NL and 99-46-02 WL, at a site 11.9 km (7.4 miles) north of Quanah.

⁶ The proposed channel changes, if granted, would be subject to the final outcome of MM Docket No. 00-148, due to mutual exclusivity between the proposed substitution at Crowell and a proposal in MM Docket No. 00-148 to add Channel 255C3 at Quanah. *Quanah, Texas*, Report and Order, 18 FCC Rcd 9405 (MB 2003), *recon. denied*, Memorandum Report and Order, 19 FCC Rcd 7159 (MB 2004), *app. for review pending*.

⁷ The channel substitution at Crowell will result in a net gain of 2,887 persons, the substitution at Quanah will result in a net gain of 3,072 persons, and the substitution at Rule will result in a net gain of 3,073 persons, for a total net gain from the proposed vacant channel substitutions of 9,032 persons.

Proposed Coordinates for Channel 288C2 at Rule, Texas: 33-10-29 NL and 99-49-26 WL, at a site 6.6 km (4.1 miles) east of Rule.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁸ interested parties may file comments on or before December 1, 2008, and reply comments on or before December 16, 2008, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission. Additionally, a copy of any filing should be served on counsel for petitioner, as follows:

Mark N. Lipp, Esq.
Scott Woodworth, Esq.
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

8. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁹ This document does not contain proposed information collection

⁸ See 47 C.F.R. §§1.415 and 1.419.

⁹ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.¹⁰

10. For further information concerning these proceedings, contact Deborah A. Dupont, Media Bureau, at (202) 418-7072. For purposes of these restricted notice and comment rule making proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

¹⁰ See 44 U.S.C. 3506(c)(4).

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the Puopolos. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.